made the paint very difficult of application, and he was required, at intervals, to heat it in a closed unventilated room provided for the purpose. After working for two days on this employment, he contracted a severe case of lead poisoning, from the effects of which he died shortly thereafter. *Held*, that this was an injury by accident and not an occupational disease. *Industrial Commission of Ohio* v. *Roth*, 120 N. E. 172 (Ohio).

The courts have been very cautious in awarding compensation for diseases, other than occupational, because the danger of fraudulently attributing every illness to the industry is considerable. The strict compliance, therefore, with the provisions present in most acts, that the injury be traceable to accidental origin, and that the date of such be definitely fixed, has been required. *Brintons, Ltd.* v. *Turvey*, [1905] A. C. 230; *Glasgow Coal Co.* v. *Welch*, [1916] 2 A. C. 1; *Vennen* v. *New Dells Lumber Co.*, 161 Wis. 370, 154 N. W. 640. The English courts, however, in an important case seem to have imposed these requirements too stringently, in demanding that the injury result from a single fortuitous event, and to them it is insufficient to show that it must have been the outcome of one or more of a few occurrences. *Eke* v. *Hart-Dyke*, [1910] 2 K. B. 677. The facts in the principal case are almost analogous to those in the English case, yet the Ohio court reached the opposite result. The facts in both show that the illness resulted from accidental source and the dates of such were sufficiently fixed and certain. The causal connection in both was obvious and imposition was amply guarded against. It seems, therefore, that the Ohio court, in refusing to construe so strictly, has arrived at a more sound and just result.

MECHANICS' LIENS — RIGHT OF SUBCONTRACTOR TO LIEN REGARDLESS OF ORIGINAL CONTRACT. — A statute provided that a subcontractor shall have a lien for labor or material furnished for the erection of a house, such lien being perfected only after notice thereof had been filed within a period of sixty days. It further provided that "the risk of all payments made to the original contractor shall be upon the owner until the expiration of the 60 days hereinbefore specified." *Held*, that the subcontractor's lien does not depend upon the terms of the original contract. *Coates Lumber & Coal Co.* v. *Klaas*, 168 N. W. 647 (Neb.).

The statute governing in the principal case is of the type which creates in favor of the subcontractor a direct lien, as distinguished from the type of statute which grants a lien derivatively, through the principal contractor's right thereto. See 2 JONES, LIENS, § 1286. The former type of legislation has been frequently assailed on the ground of unconstitutionality, but the courts have declared in its favor in most jurisdictions. Thus, the validity of a statute securing a lien irrespective of the state of accounts between the owner and the principal contractor has been sustained practically in all states. *Ballou* v. *Black*, 21 Neb. 131, 31 N. W. 673; *Mallory* v. *La Crosse Abattoir Co.*, 80 Wis. 170, 49 N. W. 1071; *Jones* v. *Great Southern Fireproof Hotel Co.*, 86 Fed. 370. *Contra*, *Palmer* v. *Tingle*, 55 Ohio St. 423, 45 N. E. 313. And a statute construed to create a lien despite a stipulation against such in the original contract, though meeting with greater opposition, has been sanctioned by the weight of authority. *Norton* v. *Clark*, 85 Me. 357, 27 Atl. 252; *Miles* v. *Coutts*, 20 Mont. 47, 49 Pac. 393; *Whittier* v. *Wilbur*, 48 Cal. 175. *Contra*, *Kelly* v. *Johnson*, 251 Ill. 135, 95 N. E. 1068; *Waters* v. *Wolf*, 162 Pa. 153, 29 Atl. 646. It is true that such statutes do somewhat impair the freedom to contract and do create a danger of making the owner liable to double payment, but no undue hardship results by requiring him to regard sufficiently the rights of a third person who has increased the value of his property. Again, the desirability of these statutes is obvious when we consider the encouragement they offer to a class which by its activities aids so materially in promoting the public welfare.

PLEADING — THEORY OF THE PLEADING. — The plaintiff in his complaint alleged that he and the defendant had made a contract of partnership, and demanded an accounting. The defendant in his answer denied the contract of partnership but admitted that he had contracted to employ the plaintiff. A referee was appointed and he found that there was no partnership but that there was a contract of employment. The court gave judgment for the plaintiff for breach of contract. *Held*, that since the complaint was framed as a bill in equity, and the judgment was in the nature of a judgment at law, the judgment should be reversed. *Jackson* v. *Strong*, 222 N. Y. 149.

For a discussion of the principles involved, see NOTES, page 166.

PUBLIC SERVICE COMPANIES — WHAT CONSTITUTES A PUBLIC USE. — A brewery generating its own electricity for light, heat, and power contracted to sell its surplus under the name of M. O. Danciger and Company to individuals within a radius of three blocks of the brewery. No use was made of the streets or highways; the consumers furnished their own poles and wires; paid for the construction, though the work was usually done by employees of the brewery. Rates were charged in a few instances on the meter basis, the meters belonging to the consumers, but in most instances the charge was governed by a flat rate. Having discontinued service without prior notice, and on refusal to reinstate service, a proceeding was brought before the Public Service Commission who ordered a reinstatement of the service. On appeal to the court, *held*, appeal sustained. *State ex rel. M. O. Danciger & Co.* v. *The Public Service Commission*, 205 S. W. 36 (Mo.) (1918).

For a discussion of the principles involved, see NOTES, page 169.

QUASI-CONTRACTS — RIGHTS ARISING UNDER MISTAKE OF FACT AS TO PRICE. — A corporation made an agreement with the owner of one-half its capital stock to buy him out on the basis of an inventory. The price was set at $13,000. It was then found that an item of $900 had been omitted from the liabilities in the inventory and a consequent overcharge of $450 to the corporation, which now sues to recover that amount. *Held*, the corporation cannot recover at law. *Borough Paper Co.* v. *Scher*, 170 N. Y. Supp. 395 (App. Div.).

The court suggests that the corporation should have gone into equity for reformation. The older decisions held that price like quality was not to be regarded as going to the essence of the contract. *Paulison* v. *Van Inderstine*, 28 N. J. Eq. 306; *Stettheimer* v. *Killip*, 75 N. Y. 282; *Okill* v. *Whittaker*, 1 DeG. & Sm. 83; *Segur* v. *Tingley*, 11 Conn. 134. But in the principal case the inventory was expressly made the basis of the sale and so became itself the subject matter of the contract. And for such cases equity allows rescission. *De Voin* v. *De Voin*, 76 Wis. 83, 44 N. W. 839. See 23 HARV. L. REV. 609–10, 614. Or equity might force the vendor to return the overcharge and let the sale stand. *Lawrence* v. *Staigg*, 8 R. I. 256; *Wirsching* v. *Grand Lodge of Masons*, 67 N. J. Eq. 711, 56 Atl. 713. Then if equity could give relief, an action at law should also lie, since money has been paid under an essential mistake of fact. The authorities, however, are in conflict as the parol evidence rule has been usually held to bar showing the mistake. See WOODWARD, QUASI-CONTRACTS, § 180, and notes; KEENER, QUASI-CONTRACTS, 123, 124. But here there is no difficulty on the parol evidence rule as the inventory was expressly made the basis of the contract price.

RAILROADS — LICENSE TO USE TRACKS — LIABILITY OF LICENSOR FOR NEGLIGENCE OF LICENSEE. — Under a statute authorizing railways to make joint running arrangements with any other railway, the defendant railway corporation allowed another railway to run trains over the licensor's tracks to fill a gap in the licensee's system. While using the defendant's tracks, the